DISPOSITION: June 27, 1949. Default decree of forfeiture. The court ordered that the product be delivered to a charitable institution.

FISH AND SHELLFISH

15182. Alleged adulteration of frozen hake fillets. U. S. Morris Fisheries, Inc., George W. Schulman, and the East Tennessee Packing Co. Pleas of not guilty by defendant firms and plea of nolo contendere by individual. Tried to the court and jury. Verdict of not guilty for defendant firms; case dismissed with respect to individual. (F. D. C. No. 20477. Sample No. 16164–H.)

INFORMATION FILED: August 30, 1946, Eastern District of Tennessee, against Morris Fisheries, Inc., Chicago, Ill., and George W. Schulman, sales manager, and the East Tennessee Packing Co., a corporation, Knoxville, Tenn.

ALLEGED SHIPMENT: On or about November 20, 1945, from the State of Tennessee into the State of Illinois.

NATURE OF CHARGE: Adulteration, Section 402 (a) (3), the article consisted in part of a decomposed substance by reason of the presence of putrid fillets.

DISPOSITION: A motion for a Bill of Particulars was filed on behalf of the defendants on December 2, 1946, and on December 4, 1946, pleas of not guilty were entered. A Bill of Particulars was thereafter filed by the Government, following which the defendants moved that the information be dismissed on the grounds (1) that the information did not state sufficient facts to constitute an offense and (2) that the information, together with the Bill of Particulars filed by the Government, did not charge a violation of any law of the United States or an offense against the United States. A motion to inspect, copy, or photograph certain papers and documents also was filed by the defendant. On September 17, 1948, the court handed down the following decision in regard to the above motions:

DARR, *District Judge:* "The defendants have a motion to dismiss the information, which includes the Bill of Particulars.

"The contentions made by the defendants will be commented upon and conclusions announced in the order presented.

"(a) The information does not charge Criminal Intent, say the defendants, and therefore is not sufficient.

"Quite obviously the information is based upon the law announced at 21 U. S. C. Sec. 331 (a), the punishment for which is fixed in Section 333 (a).

"There is ample authority to the effect that this law may be violated regardless of intent or lack of knowledge of adulteration. *Triangle Candy Co.* v. *U. S.* C. C. A. Cal (1944), 144 F. 2d 195, 155 A. L. R. 903; *U. S.* v. *2 Bags Poppy Seeds*, 147 F. 2d 123 (1945); *U. S.* v. *Thirteen Crates Frozen Eggs*, 215 F. 584, (C. C. A.–2).

"To substantiate the decisions of these courts, there is a different punishment for a violation of Section 331, 'with intent to defraud or mislead.' 21 U. S. C. Sec. 333 (b). By this provision the violation of Section 331, with intent is a felony. Of course, the case at bar is a misdemeanor.

"(b) The contention is made by the defendants that the information is insufficient because it does not charge that the foods described therein, are 'Articles used for food or drink for men or animals.' The Federal Food, Drug, and Cosmetic Act defines the word 'Food' as contained in the Act, 21 U. S. C. Sec. 331 (f) in the manner above quoted.

"The information uses the word 'Food' and is in the language of the statute and is therefore sufficient. When the word 'Food' is charged in the information it necessarily means food as defined by the law.

"It is to be noted that the definition of the word 'Food' does not carry with it the idea that the particular food introduced into commerce was to be actually used by men or animals. The definition is simply descriptive.

"In any event, it is unnecessary in an information to use the word 'Food' and define it also. *Norris et al.* v. *United States*, 152 F. 2d 808, 810, (10, 11).

"(c) The next contention is that the defendants, Morris Fisheries, and Schulman, are nonresidents of this district and, therefore, the venue as to them is wrong.

"According to the Bill of Particulars, these defendants are informed against as 'Aiders' and 'Abettors.' The venue for the offense is in this district. Aiders and Abettors do not have to be present when the offense is committed, and wherever they may be does not change the venue of the criminal offense. *Borgia* v. *United States:* (C. C. A. Cal. 1935), 78 F. 2d, 550, Certiorari denied, 56 S. Ct., 135, 296, U. S. 615, 80 L. Ed. 436; *Collins* v. *United States:* (C. C. A. Iowa, 1927) 20 F. 2d. 574; *Daniels* v. *United States:* (C. C. A. Cal., 1927), 17 F. 2d. 339, Certiorari denied, 47 S. Ct. 591, 274 U. S. 744, 71, L. Ed. 1325; *Johnson* v. *United States:* (C. C. A. Wash., 1932), 62 F. 2d. 32.

"The defendants further make the argument that the receipt in interstate commerce of any food, etc., is made an offense under said section 331 (c), and that the defendants, Morris Fisheries and Schulman, were the consignees of the articles involved. Therefore, that if there is any guilt of these defendants, it is for receiving, and not introducing into interstate commerce under Subsection (a) of Section 331.

"This argument is without merit for the reasons: (1) The same person might be guilty of introducing into interstate commerce adulterated foods under (a), and likewise guilty of receiving the same under (c), all of said Section 331, each being different substantive offenses; and (2) The receipt of such food does not constitute an offense unless there is 'the delivery or proffered delivery thereof for pay or otherwise.'

"There is no reason these defendants cannot be 'Aiders' and 'Abettors' under the provisions of 18 U. S. C. Sec. 550, if the charges in the information are sustained.

"(d) The defendants say that the information is insufficient in that it fails to negative the good faith provisions and exceptions set forth in 21 U. S. C. Sec. 333 (c).

"Very obviously these exceptions are matters of defense and constitute no description of the offense. Under such circumstances it is not necessary for an indictment or information to negative statutory exceptions. *Sutton* vs. *U. S.* 157 F. 2d 661, 665, and cases cited in notes 7, 8, & 9.

"(e) The last contention made by the defendants is that the information does not charge that the adulteration is such as to render the food injurious to health. This is based upon the same proposition that the statute defines the term, and that the information should have in it the statutory definition, being the same argument made concerning the word 'Food.'

"The information uses the statutory word 'Adulterated' and this is information to the defendants that they are charged with introducing into interstate commerce adulterated food, the adulteration being as defined by the Act. *Norris et al vs United States*, Supra.

"This is a small offense brought by statutory permission upon information. Therefore the offense is not a crime, the prosecution of which must be initiated by indictment as required by the Constitution.

"There is authority in abundance to the effect that the charges in such information do not have to be with the particularity required in an indictment proceeding under constitutional mandate.

"I am of the opinion, therefore, that the information charges an offense, and the motion to dismiss is over-ruled.

ON DEFENDANTS' MOTION TO INSPECT

"The defendants' motion to inspect all papers and documents obtained from the defendants is sustained, and the Attorney for the Government will permit such inspection of these papers.

"In so far as the motion seeks to inspect the papers belonging to others than the defendants, the motion is denied, because there is no charge or proof to the effect that such papers or documents were obtained by seizure or by process."

The case came on for trial on June 27, 1949, before the court and jury, at which time the plea of George W. Schulman was changed to nolo contendere. The trial was concluded on June 28, 1949, with a verdict of not guilty for the defendant firms. After the return of such verdict, and in accordance with a motion made on behalf of the Government, the case was dismissed with respect to George W. Schulman.

15183. Misbranding of canned oysters. U. S. v. 754 Cases * * *. (F. D. C. No. 27237. Samples Nos. 31838–K, 31839–K.)

LIBEL FILED: May 17, 1949, Southern District of California.

ALLEGED SHIPMENT: On or about March 19 and April 9, 1949, by the E. H. Bendiksen Co., South Bend, Wash.

PRODUCT: 754 cases, each containing 24 7½-ounce cans, of oysters, at Los Angeles, Calif.

LABEL, IN PART: "Bendiksen's East Point Fancy Select Pacific Oysters."

NATURE OF CHARGE: Misbranding, Section 403 (h) (2), the product fell below the standard of fill of container for canned oysters, and its label failed to bear a statement that it fell below such standard. The standard of fill of container for canned oysters is a fill such that the drained weight of oysters taken from each container is not less than 59 percent of the water capacity of the container.

DISPOSITION: June 21, 1949. The E. H. Bendiksen Co., claimant, having consented to the entry of a decree, judgment of condemnation was entered and the court ordered that the product be released under bond, conditioned that it be relabeled under the supervision of the Food and Drug Administration.

15184. Adulteration of frozen shrimp. U. S. v 113 Cases * * *. (F. D. C. No. 26433. Sample No. 31390–K.)

LIBEL FILED: January 1, 1949, District of Arizona.

ALLEGED SHIPMENT: On or about June 18, 1948, by Pasquera De Topolohamp, Guaymas, Son., Mexico.

PRODUCT: 113 cases, each containing 10 5-pound packages, of frozen shrimp at Phoenix, Ariz.

LABEL, IN PART: (Package) "Ocean Pride Brand Fresh Frozen Shrimp."

NATURE OF CHARGE: Adulteration, Section 402 (a) (3), the article consisted in whole or in part of a decomposed substance by reason of the presence of decomposed shrimp.

DISPOSITION: June 24, 1949. Luis Soto Mercado, agent for Hector Ferreira, having appeared as claimant, and the court having found that the product was adulterated in that it consisted in whole or in part of a decomposed substance and contained a foreign substance, quaternary ammonium compound, which substance would tend to make the product dangerous for human consumption, judgment of condemnation was entered. The court ordered that the product be released under bond for the purpose of sorting, cleaning, salvaging, refreezing, and bringing it into compliance with the law, under the supervision of the Federal Security Agency. The entire lot of the product was reprocessed into fish bait.